

Course Outline

COURSE: LAWS 4603B—Transitional Justice

TERM: Winter 2019

PREREQUISITES: LAWS 4603B

CLASS: Day & Time: Friday, 8:35 to 11:25 am
Room: Paterson Hall 240

INSTRUCTOR: Prof. Umut Özsu

CONTACT: Office: Loeb Building D498
Office Hrs: Thursday, 2:00 to 4:00 pm
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COURSE DESCRIPTION

The subject of a large and varied body of academic and policy-oriented writing, “transitional justice” is the set of norms, practices, and mechanisms with which states that have shifted from one mode of political administration to another attempt to take stock of legacies of violence, repression, or systemic discrimination. The “justice” that is devised for such periods of “transition” typically relies upon both domestic and international law, and is premised upon some combination of the following elements: institutional reforms, reparations initiatives, large-scale criminal prosecutions, investigations into pervasive human rights violations, and the establishment of commissions for the ascertainment of “truth” and the facilitation of societal “reconciliation”.

This course provides an interdisciplinary introduction to key debates concerning transitional justice. We will grapple with the theoretical content and political significance of transitional justice, examine its domestic and international legal dimensions, and study its operation in a variety of different national and

regional contexts.

REQUIRED TEXTS

All required readings are available online or will be made available on cuLearn (<https://carleton.ca/cu-learn/>). As a result, you do not need to purchase any text for this course.

EVALUATION

(All components must be completed in order to get a passing grade)

There are four formal evaluation components to this course:

Research paper: 50% (due 2:35 pm on Friday, 12 April 2019)

Response note: 20% (due 2:35 pm on Friday, 22 February 2019)

Presentation: 15%

Class participation: 15%

These formal evaluation components are structured as follows:

1. Research paper: The research paper must be no less than 5000 words in total (excluding notes). It must have a clear thesis, be driven by a structured argument, and provide a sustained analysis of at least one of the issues or debates that we have examined in the course. While you must engage with some of the literature that we have studied, you will, of course, be expected to conduct independent research. For detailed guidelines, please consult the “Advice on Writing Assignments” document with which you have been provided alongside this syllabus. (This document is also available on cuLearn.)

All students are required to canvass prospective paper topics with me by Friday, 15 March 2019. (Please email me with a brief description of your proposed paper.)

The final paper is due by 2:35 pm on Friday, 12 April 2019. It must be submitted electronically via cuLearn in advance of this deadline. Please do not submit a hard copy to the Department of Law and Legal Studies’ general office.

Do not submit the research paper late. A grade reduction of 10% will apply for every 24 hours that the paper is late. (This includes weekends.) Extensions will be accorded only under extreme circumstances, such as severe illness or death of a family member. Whenever applicable, appropriate documentation must accompany requests for extensions. Computer failure, conflicts with work schedule, or similar problems are not a valid excuse for failing to submit your paper on time.

2. Response note: The response note must be 1500 words in total (excluding notes). It is intended to give you an opportunity to analyze—carefully but concisely—one of the required pieces of assigned reading that appears on this syllabus. You are not expected to recapitulate the author’s various points at great length. Indeed, limiting yourself to such recapitulation will almost certainly result in a grade reduction. Rather, you are expected to engage critically with the author’s theoretical approach and central argument in light of the materials that we have studied, and to do so with a view to evaluating their

strengths and weaknesses. For detailed guidelines, please consult the “Advice on Writing Assignments” document with which you have been provided alongside this syllabus. (This document is also available on cuLearn.)

The note is due by Friday, 22 February 2019. It must be submitted electronically via cuLearn in advance of this deadline. Please do not submit a hard copy to the Department of Law and Legal Studies’ general office.

Do not submit the response note late. A grade reduction of 10% will apply for every 24 hours that the note is late. (This includes weekends.) Extensions will be accorded only under extreme circumstances, such as severe illness or death of a family member. Whenever applicable, appropriate documentation must accompany requests for extensions. Computer failure, conflicts with work schedule, or similar problems are not a valid excuse for failing to submit your paper on time.

3. Presentation: You are required to prepare and deliver a fifteen- to twenty-minute-long presentation. Your presentation must relate to one of the required pieces of assigned reading that we will be discussing. (You will choose the piece of assigned reading that you will be presenting during our first or second session.) You will be expected to outline the article’s central argument and theoretical orientation, discuss its various strengths and weaknesses, and pose questions for general class discussion.

4. Class participation: Class participation will be assessed on the basis of your attendance in class and demonstrated familiarity with assigned readings, as manifested through the frequency with which you engage in serious and sustained discussion.

Please note that there will be *no* make-up assignments or “grade-booster” assignments under any circumstances. Failure to complete *all* assignments in the course will result in a failing grade for the course. Deferrals are granted by the Registrar’s Office.

Please also note that standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

SUPPLEMENTARY NOTE

Please note that there will be *no* “make-up” or “grade-booster” assignments under any circumstances. Deferrals are granted by the Registrar’s Office.

Please also note that standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

COMMUNICATION

The primary means of communication outside of class will be cuLearn. However, I am always happy to answer any questions you may have or to discuss your research and writing. If you would like to talk to me in person, please stop by my office during office hours (preferably after having emailed me in advance to let me know that you will be doing so). If you would like to communicate via email, please note that I make every effort to respond to email queries within 48 hours.

SCHEDULE

Session I [11 January 2019]—Introductory session

[No assigned readings.]

Session II [18 January 2019]—What is “transitional justice”?

International Center for Transitional Justice, “What is Transitional Justice?”, available at: <https://www.ictj.org/about/transitional-justice> (last accessed 14 December 2017).

“Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice” (2010), available at: <https://www.un.org/ruleoflaw/blog/document/guidance-note-of-the-secretary-general-united-nations-approach-to-transitional-justice/> (last accessed 14 December 2017).

Ruti G. Teitel, “Transitional Justice Genealogy” 16 (2003) *Harvard Human Rights Journal* 69–94.

Paige Arthur, “How ‘Transitions’ Reshaped Human Rights: A Conceptual History of Transitional Justice” 31 (2009) *Human Rights Quarterly* 321–67.

Optional reading

Vasuki Nesiah, “Theories of Transitional Justice: Cashing in the Blue Chips” in *The Oxford Handbook of the Theory of International Law*, ed. Anne Orford and Florian Hoffmann (Oxford: Oxford University Press, 2016) 779–96.

Rosemary Nagy, “Transitional Justice as Global Project: Critical Reflections” 29 (2008) *Third World Quarterly* 275–89.

Colleen Murphy, *The Conceptual Foundations of Transitional Justice* (Cambridge: Cambridge University Press, 2017), introduction.

Session III [25 January 2019]—International legal dimensions of transitional justice

Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9 (1998), available at: http://legal.un.org/icc/statute/99_corr/cstatute.htm (last accessed 14 December 2017), articles 5–8.

United Nations Human Rights Council, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-Recurrence, Pablo de Greiff*. UN Doc. A/HRC/21/46 (2012), available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-46_en.pdf (last accessed 14 December 2017).

José Alvarez, “Alternatives to International Criminal Justice” in *The Oxford Companion to International Criminal Justice*, ed. Antonio Cassese (Oxford: Oxford University Press, 2009) 25–38.

Obiora Chinedu Okafor and Uchechukwu Ngwaba, “The International Criminal Court as a ‘Transitional Justice’ Mechanism in Africa: Some Critical Reflections” 9 (2015) *International Journal of Transitional Justice* 90–108.

Session IV [1 February 2019]—The post-Second World War context

Gary Jonathan Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton: Princeton University Press, 2000), ch. 5.

Ann Marie Prévost, “Race and War Crimes: The 1945 War Crimes Trial of General Tomoyuki Yamashita” 14 (1992) *Human Rights Quarterly* 303–38.

Optional reading

Doreen Lustig, “The Nature of the Nazi State and the Question of International Criminal Responsibility of Corporate Officials at Nuremberg: Revisiting Franz Neumann’s Concept of Behemoth at the Industrial Trials” 43 (2011) *New York University Journal of International Law and Politics* 965–1044.

Session V [8 February 2019]—Post-Apartheid South Africa

Claire Moon, “Narrating Political Reconciliation: Truth and Reconciliation in South Africa” 15 (2006) *Social and Legal Studies* 257–75.

Judith Renner, “The Local Roots of the Global Politics of Reconciliation: The Articulation of ‘Reconciliation’ as an Empty Universal in the South African Transition to Democracy” 42 (2014) *Millennium: Journal of International Studies* 263–85.

Mahmood Mamdani, “Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC)” 32 (2002) *Diacritics* 33–59.

Optional reading

Truth and Reconciliation Commission (South Africa), *Truth and Reconciliation Commission Report*, 7 vols. (1998), available at: <http://www.justice.gov.za/trc/report/> (last accessed 14 December 2017).

Session VI [15 February 2019]—Other African experiences

Susan Thomson, “The Darker Side of Transitional Justice: The Power Dynamics Behind Rwanda’s *Gacaca* Courts” 81 (2011) *Africa* 373–90.

Susan Slyomovics, “The Moroccan Equity and Reconciliation Commission: The Promises of a Human Rights Archive” 24 (2016) *Arab Studies Journal* 10–41.

William A. Schabas, “Conjoined Twins of Transitional Justice? The Sierra Leone Truth and Reconciliation Commission and the Special Court” 2 (2004) *Journal of International Criminal Justice* 1082–99.

Noha Aboueldahab, “Transitional Justice Policy in Authoritarian Contexts: The Case of Egypt” (October 2017), Brookings Doha Center Policy Briefing, available at: <https://www.brookings.edu/research/transitional-justice-policy-in-authoritarian-contexts-the-case-of-egypt/> (last accessed 14 December 2017).

Optional reading

Charles Manga Fombad, “Transitional Justice in Africa: The Experience with Truth Commissions” (2008), available at: http://www.nyulawglobal.org/globalex/Africa_Truth_Commissions.html (last accessed 14 December 2017).

Morocco Justice and Reconciliation Commission, *Summary of the Final Report* (2006), available at: http://www.ccdh.org.ma/sites/default/files/documents/rapport_final_mar_eng-3.pdf (last accessed 14 December 2017).

Sierra Leone Truth and Reconciliation Commission, *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission*, 3 vols. (2004), available at: <http://www.sierraleonetr.com/index.php/view-the-final-report/table-of-contents> (last accessed 14 December 2017).

[Due to the winter break, no class will be held on 22 February 2019.]

Session VII [1 March 2019]—Latin America

Cath Collins, “Human Rights Trials in Chile During and After the ‘Pinochet Years’” 4 (2010) *International Journal of Transitional Justice* 67–86.

Ari Edward Gandsman, “Retributive Justice, Public Intimacies and the Micropolitics of the Restitution of Kidnapped Children of the Disappeared in Argentina” 6 (2012) *International Journal of Transitional Justice* 423–43.

Kathryn Sikkink and Carrie Booth Walling, “The Impact of Human Rights Trials in Latin America” 44 (2007) *Journal of Peace Research* 427–45.

Optional reading

National Commission on the Disappearance of Persons (Argentina), *Nunca Más: Report of the National*

Commission on the Disappearance of Persons (1986), available at: http://www.desaparecidos.org/nuncamas/web/english/library/nevagain/nevagain_001.htm (last accessed 14 December 2017).

National Commission for Truth and Reconciliation of Chile, *Report of the Chilean National Commission on Truth and Reconciliation* (1991), available at: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf (last accessed 14 December 2017).

Christiane Wilke, “‘This Following Orders Thing is Very Relative’: Ascriptions and Assumptions of Responsibility in the *Causa ESMA*, 1983–1987” in *Political Trials in Theory and History*, ed. Jens Meierhenrich and Devin O. Pendas (Cambridge: Cambridge University Press, 2016) 317–46.

[No class will be held on 8 March 2019.]

Session VIII [15 March 2019]—The “post-communist world”

Samuel P. Huntington, “Democracy’s Third Wave” 2 (1991) *Journal of Democracy* 12–34.

Kora Andrieu, “An Unfinished Business: Transitional Justice and Democratization in Post-Soviet Russia” 5 (2011) *International Journal of Transitional Justice* 198–220.

Jelena Subotic, “The Mythologizing of Communist Violence” in *Post-Communist Transitional Justice: Lessons from Twenty-Five Years of Experience*, ed. Lavinia Stan and Nadya Nedelsky (Cambridge: Cambridge University Press, 2015) 188–210.

Kirsten Campbell, “The Gender of Transitional Justice: Law, Sexual Violence and the International Criminal Tribunal for the Former Yugoslavia” 1 (2007) *International Journal of Transitional Justice* 411–32.

Session IX [22 March 2019]—Canada

Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015), available at: http://www.myrobust.com/websites/trcinstitution/File/Reports/Executive_Summary_English_Web.pdf (last accessed 14 December 2017), “Introduction”, “Commission Activities”, and “Calls to Action”.

Rosemary Nagy, “The Truth and Reconciliation Commission of Canada: Genesis and Design” 29 (2014) *Canadian Journal of Law and Society* 199–217.

John Borrows, “Residential Schools, Respect, and Responsibilities for Past Harms” 64 (2014) *University of Toronto Law Journal* 486–504.

Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014), introduction.

Session X [29 March 2019]—Memory

Samuel Moyn, “You Must Remember This” *The New Republic* (4 May 2016), available at: <https://newrepublic.com/article/133017/must-remember-war-memorials-david-rieff> (last accessed 14 December 2017).

Jan-Werner Müller, “East Germany: Incorporation, Tainted Truth, and the Double Division” in *The Politics of Memory: Transitional Justice in Democratizing Societies*, ed. Alexandra Barahona De Brito, Carmen González-Enríquez, and Paloma Aguilar (Oxford: Oxford University Press, 2001) 248–74.

Lynda E. Boose, “Crossing the River Drina: Bosnian Rape Camps, Turkish Impalement, and Serb Cultural Memory” 28 (2002) *Signs* 71–96.

Dirk Moses, “The Canadian Museum for Human Rights: The ‘Uniqueness of the Holocaust’ and the Question of Genocide” 14 (2012) *Journal of Genocide Research* 215–38.

Session XI [5 April 2019]—Reparations

Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998), ch. 5.

Adrian Vermeule, “Reparations as Rough Justice” in *Transitional Justice*, ed. Melissa S. Williams, Rosemary Nagy, and Jon Elster (New York: New York University Press, 2012) 151–65.

Zina Miller, “Effects of Invisibility: In Search of the ‘Economic’ in Transitional Justice” 2 (2008) *International Journal of Transitional Justice* 266–91.

ACADEMIC ACCOMMODATIONS

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: Please contact me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Equity Services website: carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf

Religious obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Equity Services website: carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf

Academic Accommodations for Students with Disabilities: If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (PMC) at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your Letter of Accommodation at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally-scheduled exam (if applicable) www.carleton.ca/pmc

Plagiarism

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's Academic Integrity Policy can be found at: <http://carleton.ca/studentaffairs/academic-integrity/>

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: carleton.ca/sexual-violence-support

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit: students.carleton.ca/course-outline

Department Policy

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

LAWS 4603B

Winter 2019

<http://carleton.ca/law/current-students/>